United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: February 2, 2007

TO : Victoria E. Aguayo, Regional Director
Region 21

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Teamsters Local 986
(DHL Express (USA) Inc.) 560-2575-6713
Case 21-CC-3376 560-7520-7500
560-7540-4000
584-3780-6700

The Region submitted this Section 8(b)(4)(ii)(A) and (B) case for advice on whether a Union's grievance, which claims that the Employer violated the contract by subcontracting bargaining unit work which unit employees allegedly have not performed for 15 years, has an unlawful secondary object or a lawful primary work reacquisition object.[1]

Applying a Bill Johnson's-based standard, we conclude that the grievance has a reasonable basis under the contract and that the bargaining unit has a colorable claim to perform the work at issue. Accordingly, the charge should be dismissed, absent withdrawal.

FACTS

DHL Express (USA) Inc. (the "Employer") is engaged in ground operations involving the pickup, sorting, loading, and delivery of freight, as well as air operations transporting freight, using a system of "service centers" and "hubs" located throughout the country. Service centers are open to the public to drop off packages, which are sorted and delivered. Packages also come into service centers from other parts of the country for local distribution. Hubs, on the other hand, handle incoming air freight and are usually located near an airport. The incoming air freight is sorted and sent to the appropriate service center for local distribution by ground carrier. Outgoing freight from service centers is taken to the hub by ground carrier for long-distance distribution by air.

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[1] There is no allegation that any contract provision is facially unlawful under Section 8(e).

In 2003, the Employer acquired Airborne Inc. and became bound to the collective-bargaining agreement that Airborne had negotiated with Teamsters Local 986 (the "Union").[2] The agreement covers a unit of dock and shuttle employees working in the Union's jurisdiction: Los Angeles, Riverside, Orange, and San Bernardino counties in Southern California. Dock work involves the loading, unloading, scanning, and sorting of packages, while shuttle work consists of the movement of freight by truck.[3]

The collective-bargaining agreement contains a "work preservation" clause prohibiting the Employer from subcontracting, transferring, leasing, diverting, assigning, or conveying work of the kind, nature or type covered by, or "presently or previously performed by, or hereafter assigned to," the unit. Other contract clauses specifically prohibit the "farming out" of dock work, except for existing situations established by agreed-to past practices, and prohibit non-unit employees from performing unit work.

The contract also contains an open-ended grievance procedure that does not require final and binding arbitration. Rather, grievances proceed through a series of hearings before various regional and national joint committees. If a grievance deadlocks in committee or the employer does not abide by a grievance panel's decision, the Union is entitled to engage in self help, e.g., to strike or picket to force the employer to sustain the agreement.

Airborne had a long collective-bargaining relationship with the Union before the Employer acquired it in 2003.[4] Airborne's principal hub was in Wilmington, Ohio, but it

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[2] The collective-bargaining agreement is actually a complex system of agreements including a national Master Freight Agreement, a Western States Agreement, and a local agreement. All the agreements are in effect until March 31, 2008.

[3] The local agreement describes bargaining unit work as including freight handling and the use of freight handling equipment, including the loading and unloading of aircraft and shuttle trucks, and including containers.

[4] We are unaware of any material differences between the current collective-bargaining agreements and those in existence during the course of the Union's collective-bargaining relationship with Airborne before the 2003 merger.

operated several regional hubs throughout the country. Airborne first began flying freight into a regional hub near the Los Angeles International Airport (the "96th Street Facility") in 1988. Bargaining unit employees performed the dock and shuttle work at the 96th Street Facility. This was Airborne's only hub located within the unit's geographic area, but unit employees also performed dock and shuttle work at Airborne service centers.

In about 1990, Airborne relocated the hub from the 96th Street Facility to a larger facility in Fresno, California, which is located outside the bargaining unit's geographic area.[5] After the relocation, unit employees no longer performed dock work at any hub facility. We do not know the precise impact of the relocation on unit employees' jobs. However, unit employees continued to perform dock and shuttle work at service centers within the unit's geographic area, and at least some unit employees continued to work at the 96th Street Facility until 1998, even though it was no longer considered a hub.[6]

In 1998, Airborne opened a new hub in San Marcos, California. The new San Marcos hub serviced Southern California while the Fresno hub now serviced only Northern California. The San Marcos hub was also located outside the unit's geographic area, so unit employees did not work there.

As mentioned above, the Employer acquired Airborne in 2003. Because of federal prohibitions on foreign ownership of U.S. airlines, the Employer, which is owned by a foreign entity, was required to spin off Airborne's air operations.[7] The air operations became a separate entity – ABX Air, Inc.[8] Airborne's ground operations became a subsidiary of the Employer, which adopted the Union contract. The Employer took over Airborne's existing network of service centers and hubs and contracted with ABX Air to provide air operations at the former Airborne hubs, including the San

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[5] The Fresno hub serviced both Northern and Southern California.

[6] We do not know whether the 96th Street Facility was classified as a service center or some other type of facility from 1990-1998.

[7] The facts regarding the merger between the Employer and Airborne are set forth more fully in Air Line Pilots Association, 345 NLRB No. 51, slip op. at 1-2, 7-9 (2005).

[8] The Employer thus does not own ABX Air.

Marcos hub. ABX Air employees also performed the dock work at the San Marcos hub.[9]

In the summer of 2004, the Union was certified as collective-bargaining representative of a separate unit of employees performing dock work for the Employer at its LAX Gateway facility. The Gateway facility is like a hub except that it receives freight from international flights rather than domestic flights.[10] The Employer states that the employees performing dock work at the Gateway facility, which has been in existence since the mid-1990s, perform work identical to that of employees in the hubs.

In August 2004, the Employer relocated the San Marcos hub to San Bernardino, California, which is located within the unit's geographic area. Nonetheless, the Employer continued to contract out the dock work there to ABX Air employees. The Union filed a grievance in September 2004 alleging that the Employer had violated the collective-bargaining agreement by opening a new facility within the Union's jurisdiction and operating it with non-Union dock workers and drivers. The Employer denied the grievance at the first step, and the Union did not pursue it further. The Union states that it stopped pursuing the grievance because the San Bernardino hub served other companies besides the Employer and was not a "dedicated" facility.

In fall 2005,[11] the Employer relocated the hub from San Bernardino to the March Air Force base in Riverside, California, which is also within the unit's geographic territory.[12] The Employer owns the Riverside facility,[13] but the dock work at Riverside has been performed by about 300 ABX Air employees.[14] The Union asserts that the

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[9] Indeed, the Employer asserts that ABX Air employees perform the dock work at all of its 19 hubs nationwide.

[10] Apparently, for this reason, the facility is not part of the Employer's hub network.

[11] All dates are in 2005 unless otherwise indicated.

[12] The Riverside hub combines both air and ground freight for both Northern and Southern California.

[13] The Employer's extensive press release describes the Riverside facility as its new state-of-the-art hub.

[14] The shuttle drivers who bring freight over the road into and out of the Riverside hub are bargaining unit members employed by the Employer and are not involved in the instant dispute.

Employer also owns the unloading and sorting equipment and containers at Riverside.

In October, the Union filed another grievance, alleging that the Employer violated the collective-bargaining agreement by using non-unit employees to perform the dock work at the Riverside hub. The grievance alleges that the work at issue is bargaining unit work formerly performed by unit employees at the 96th Street Facility. The grievance does not seek to apply the Union's collective-bargaining agreement to the ABX Air employees, but rather seeks an end to the Employer's subcontract of dock work at Riverside to ABX Air and the assignment of that work to bargaining unit employees.

The Employer denied the grievance at the first step. The grievance was subsequently pursued through the various joint committees and was presented to the Joint Western Area Committee (JWAC) for hearing on August 7, 2006. The JWAC has agreed to hold the case in abeyance pending resolution of the instant charge. The Union has not picketed or struck the Employer or threatened to do so.

The Employer filed the instant charge on August 4, 2006. The charge alleges that the Union violated Section 8(b)(4)(ii)(A) and (B) by prosecuting an unlawful grievance in order to coerce the Employer to cease doing business with ABX Air in order to acquire work for the bargaining unit to which the unit has no legal entitlement.

ACTION

Applying a Bill Johnson's-based standard, we conclude that the grievance has a reasonable basis under the contract and that the bargaining unit has a colorable claim to perform the work at issue.[15] The grievance is not predicated upon a reading of the contract that would convert it into a de facto hot cargo provision, and the dispute has not been resolved in a prior Board determination. Accordingly, the charge should be dismissed, absent withdrawal.

Section 8(b)(4)(ii)(A) prohibits a union from threatening, restraining, or coercing an employer with an object of forcing or requiring it to enter into an

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[15] The Union has not struck or picketed or threatened to do so, and the mere invocation of the grievance procedure, which has yet to be completed, does not constitute a threat to strike or picket.

agreement prohibited by Section 8(e). Similarly, Section 8(b)(4)(ii)(B) prohibits such conduct to force or require any person to cease doing business with any other person. Section 8(e) prohibits a union and employer from entering into any agreement where the employer agrees to cease doing business with any other person. Sections 8(b)(4) and 8(e) do not, however, prohibit all coercion or agreements that may result in a cessation of business with another employer, but rather distinguish between lawful "primary" and unlawful "secondary" boycott activity.[16] "The touchstone is whether the agreement or its maintenance is addressed to the labor relations of the contracting employer vis-à-vis his own employees."[17] Hence, Sections 8(b)(4) and 8(e) do not prohibit conduct or agreements seeking to preserve or reacquire traditional bargaining unit work for bargaining unit employees – "fairly claimable" work – so long as the contracting employer has the power to assign the disputed work to the unit employees.[18]

With regard to the kind of conduct prohibited by Section 8(b)(4), the Board has long held that good faith prosecution of a reasonably-based contract claim, by itself, is not coercion within the meaning of Section 8(b)(4)(ii).[19] Rather, the validity of a grievance prosecution is generally determined under the principles of Bill Johnson's Restaurant v. NLRB, 461 NLRB 731 (1983), in

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[16] National Woodwork Mfrs. Assn. v. NLRB, 386 U.S. 612, 635 (1967) (contract clause with work preservation object did not violate Section 8(e), and strike against employer for allegedly violating the contract clause did not violate 8(b)(4)(B)).

[17] Id. at 645.

[18] NLRB v. Longshoremen ILA, 447 U.S. 490, 504 (1980).

[19] Teamsters Local 483 (Ida Cal), 289 NLRB 924, 925 (1988) (no 8(b)(4)(ii)(A) violation where union grieved and sought to compel arbitration through a Section 301 action over whether owner-operators were covered by labor agreement, where union's contention that owner-operators were employees was reasonable, union did not strike or picket, and there had been no prior adjudicatory determination regarding the owner-operators' status); Teamsters Local 83 (Cahill Trucking), 277 NLRB 1286, 1290 (1985) (grievance filed to enforce a colorable contract claim is not coercion within meaning of Section 8(b)(4)(ii)(A) or (B)); Teamsters (California Dump Truck Owners Assn.), 227 NLRB 269, 274 (1976) (same).

which the Supreme Court held that the Board could enjoin a lawsuit only if it is without reasonable basis in fact or law. The "reasonable basis" standard does not apply, however, to grievances accompanied by picketing or other coercive conduct[20] or grievances filed with an unlawful object.[21]

In Elevator Constructors (Long Elevator), the Board found that a union violated Section 8(b)(4)(ii)(A) by pursuing a grievance seeking an unlawful 8(e) interpretation of a contractual no-strike clause.[22] There, the respondent union filed a grievance on behalf of an employee who was disciplined for refusing to work behind a lawfully erected reserve gate. The union sought a construction of the clause that would require the primary employer to acquiesce in any work stoppage by its employees in support of the union's dispute with a neutral employer. The Board found that, so interpreted, the clause necessarily would constitute a de facto hot cargo provision in violation of Section 8(e).[23] For this reason, "we may properly find the pursuit of the grievance coercive, notwithstanding the Supreme Court's decision in Bill Johnson's...."[24]

Applying Bill Johnson's, we conclude that since the bargaining unit has a colorable claim to the work in controversy, the Union's grievance is reasonably based

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[20] Teamsters Local 705 (Emery Air Freight), 278 NLRB 1303, 1305 (1986), affd. in part and remanded in part 820 F.2d 448 (D.C. Cir. 1987) (grievance which was not intended to preserve existing unit jobs violated 8(b)(4)(ii)(B), in context of threats and strike against employer which had unlawful secondary object); Teamsters Local 25 (Boston Deliveries), 282 NLRB 910, 910 n.1 (1987), enfd. 831 F.2d 1149 (1st Cir. 1987) (entire course of union's conduct – including grievances, striking, and picketing – violated 8(b)(4)(B)).

[21] Elevator Constructors (Long Elevator), 289 NLRB 1095, 1095 (1988), enfd. 902 F.2d 1297 (8th Cir. 1990); Service Employees Local 32B-32J (Nevins Realty), 313 NLRB 392, 392, 401-402 (1993), enfd. in pertinent part 68 F.3d 490 (D.C. Cir. 1995). See also Bill Johnson's Restaurant v. NLRB, 461 NLRB at 737 n.5.

[22] 289 NLRB at 1095.

[23] Ibid.

[24] Ibid.

under the contract[25] and the grievance has a lawful work reacquisition object. As discussed in more detail below, certain evidence supports the Union's argument that the work is fairly claimable, while other evidence supports the Employer's argument that it is not. Under the totality of the circumstances, however, a reasonable argument can be made that the dock work at the Riverside hub is fairly claimable bargaining unit work and that the grievance therefore has a primary object.[26] Because the grievance has not been accompanied by strikes, picketing, or threats to do so, we do not need to determine, at this time, whether the dock work at the Riverside hub is, in fact, fairly claimable, but only that the Union has a colorable claim to the work.[27]

Fairly claimable work has been described as work that is "identical or very similar to that already performed by the bargaining unit and that bargaining unit members have the necessary skill and are otherwise able to perform."[28]

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[25] The contract prohibits the Employer from subcontracting bargaining unit work or using non-unit employees to perform unit work. Assuming that the Riverside dock work is unit work, a reasonable argument can be made that the Employer violated the contract by subcontracting the work to ABX Air and using ABX Air's non-unit employees to perform the work.

[26] Compare Elevator Constructors (Long Elevator), 289 NLRB at 1095 (union's construction of contract clause necessarily gave it an unlawful object); Food & Commercial Workers Local 367 (Quality Food), 333 NLRB 771, 771-72 (2001) (union failed to present colorable contract claim to work in controversy, which clearly was not fairly claimable).

[27] Although one could argue that the Union's grievance is, itself, a threat to strike or picket, because it is not subject to final and binding arbitration and the contract permits the Union to engage in self help if the grievance deadlocks or the Employer fails to abide by the grievance panel's decision, we note that the grievance is still before the JWAC, which has not yet ruled on its validity. At this point in the proceedings, it is unclear whether there will be a deadlock or whether the grievance will be resolved in the Union's or the Employer's favor. Under these circumstances, we do not believe that we can prove by a preponderance of the evidence that the mere invocation of the grievance procedure constitutes a threat to strike or picket.

[28] Newspaper and Mail Deliverers' Union (Hudson County News Co.), 298 NLRB 564, 566 (1990).

However, the fact that the contract includes job classifications covering the disputed work will not make the work fairly claimable if the unit employees have never performed the work.[29] A union has been found to have a primary object when seeking to recapture or reacquire fairly claimable work that had been previously performed by unit employees.[30]

Arguably, the dock work at the Riverside hub is fairly claimable notwithstanding the passage of about 15 years since unit employees last performed dock work at a hub. Thus, the Union asserts that unit employees at service centers have regularly performed the identical or very similar work of loading, unloading, and scanning packages during that time period. Although the Employer was made aware of the Union's assertion, it presented no evidence indicating that dock work performed at a service center is materially different from dock work performed at a hub. One could speculate that dock work at a service center might differ from dock work at a hub in that cargo is only loaded and unloaded from trucks at service centers, whereas cargo is loaded and unloaded from both trucks and airplanes at hubs.[31] However, an Employer official has conceded that service center work includes the loading of parcels into "C" containers, which are uniquely designed to fit through airplane passenger doors. This bolsters the Union's claim that, notwithstanding the absence of airplanes at service centers, dock work at a service center is identical or very similar to dock work performed at a hub.

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[29] Teamsters Local 213 (Bigge Drayage Co.), 198 NLRB 1046, 1046 (1972), enfd. 520 F.2d 172 (D.C. Cir. 1975).

[30] Meat & Highway Drivers (Wilson & Co.) v. NLRB, 335 F.2d 709, 714 (D.C. Cir. 1964) (contract clause requiring that meat deliveries in Chicago be made by local employees covered by union contact valid because it involved "recapture" of work that the local drivers had lost when meat packers moved out of Chicago about three years earlier as opposed to "work acquisition").

[31] See Teamsters Local 242 (D. Fortunato, Inc.), 197 NLRB 673, 678 (1972) (driving work performed by unit is "considerably more limited" than the driving work in controversy, and the "fact that the driving of one truck may well be similar to, and require like skills as, the driving of any other truck does not persuade us that all driving work is therefore 'fairly claimable' by a unit of drivers").

In addition, it is clear that unit employees performed identical work 15 years ago, and Board precedent supports the argument that the passage of time, alone, is not sufficient to render previously performed work no longer fairly claimable.[32] Thus, in Retail Clerks Local 648 (Brentwood Markets), the Board found that shelf-stocking work at a grocery store was fairly claimable despite the fact that unit employees had not performed such work for ten years, where the shelving work had continued to be performed in the same manner as previously done by unit employees.[33] The Board has found work to be not fairly claimable in cases where the unit had not performed the work for a number of years, but in those cases the passage of time was considered in the context of the union's prior acquiescence to the loss of the work[34] or was only one of several factors in the analysis.[35]

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[32] Work that has never been performed by unit employees generally will not be deemed "fairly claimable." Service Employees Local 32B-32J (Nevins Realty), 313 NLRB 392, 392 (1993), enfd. in pertinent part 68 F.3d 490 (D.C. Cir. 1995) (union's arbitration claim over employer's selection of cleaning subcontractor lacked primary object, as cleaning work had always been contracted out, and union had never represented cleaning employees); Teamsters Local 705 (Emery Air Freight), 278 NLRB 1303, 1304 & n.7 (1986), enfd. in pertinent part 820 F.2d 448 (D.C. Cir. 1987) (threat, picketing and grievance lacked primary object, as employees represented by union never performed the work at issue).

[33] 171 NLRB 1018, 1020 (1968). See also Meat & Highway Drivers (Wilson & Co.) v. NLRB, 335 F.2d 709, 714 (D.C. Cir. 1964) (attempt by unit of local drivers to recapture work lost three years earlier when meat packers moved out of Chicago had primary object).

[34] Compare Newspaper & Mail Deliverers (B & W Distributors), 274 NLRB 929, 931-932 (1985) (union's failure to object for at least six years to non-unit employees' performance of work "waived any claim that the object of its actions...is the preservation of unit work"); Marine Officers Assn. (Riverway Co.), 260 NLRB 1360, 1360 (1982), enfd. mem. 716 F.2d 907 (8th Cir. 1983) (union's "sitting on its rights for almost [three] years" after the employer contracted out work previously performed by unit made the work no longer fairly claimable).

[35] Teamsters Local 814 (Santini Bros.), 208 NLRB 184, 199 (1974), remanded 512 F.2d 564 (D.C. Cir. 1975), supplemented 223 NLRB 752 (1976), enfd. 546 F.2d 989 (D.C. Cir. 1976), cert. denied 434 U.S. 818 (1977) (long distance

Here, the Union arguably did not acquiesce in the Employer's use of non-unit employees to perform dock work at hubs. Typically, the Board finds acquiescence when the union fails to assert its rights within a reasonable period of time after the contracting employer subcontracts unit work.[36] That scenario did not occur here. The only reason unit employees stopped performing dock work at hubs 15 years ago was that Airborne moved the 96th Street Facility hub out of the unit's four county geographic area.[37] Nor did the Union's failure to pursue the San Bernardino grievance waive its right to claim the Riverside work. The Union asserts that it withdrew the grievance because the San Bernardino facility was not a dedicated Employer facility and therefore that the Union had no contractual claim to the work there. A union's calculated assessment not to pursue a grievance beyond the first step when circumstances indicate a low likelihood of success is not the equivalent of "sitting on its rights."[38]

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hauling work not fairly claimable due to 1) general industry practice of using owner-operators rather than employees; 2) passage of about five years since unit employees had performed work in controversy; 3) increase in number of other bargaining unit jobs in the intervening years; 4) union's failure for several years to claim that use of owner-operators violated contract; and 5) evidence that, even if long distance work was once again assigned to unit employees, sufficient personnel would be difficult to find).

[36] Newspaper & Mail Deliverers (B & W Distributors), 274 NLRB at 931-932 (six years not a reasonable time to wait to assert rights); Marine Officers Assn. (Riverway Co.), 260 NLRB at 1360 (three years was too long to wait; "[t]here comes a point in time when the allegedly wronged party must either protest the alleged wrong or be deemed to consent to the wrong").

[37] We do not know whether the Union protested Airborne's relocation decision at that time. But even a failure to protest would not necessarily evince acquiescence in the loss of the work, because once the work was relocated outside the unit's geographic area, it was no longer unit work. Under those circumstances, unlike in B & W Distributors and Riverway Co., supra, the Union arguably would not have had a colorable contract claim to the work.

[38] Compare Marine Officers Assn. (Riverway Co.), 260 NLRB at 1360. Moreover, in other contexts, the Board has found that one-time failures to act do not constitute waivers. Owens-Corning Fiberglas, 282 NLRB 609, 609 (1986) (union's

In addition, the Union's decision to organize the employees at the Employer's LAX Gateway facility, rather than filing a grievance over their performance of unit work, was not acquiescence in the use of non-unit employees at hubs. The LAX Gateway facility appears to have been an Employer facility even before the merger with Airborne, and the employees performing dock work there had not been represented by any union. Thus, the Union reasonably determined that the dock work at the LAX Gateway facility was not "unit work" under the contract, even after the merger, and its decision to organize those employees into a separate unit rather than claim the work for the unit here does not evince an acquiescence in the type of situation presented at Riverside.

On the other hand, the Board has viewed an absence of actual job losses by unit employees as one factor that might bely an asserted primary work recapture objective.[39] Here, notwithstanding the relocation of the hub out of the bargaining unit's geographic area 15 years ago, the Employer asserts that the number of bargaining unit jobs has only increased. Thus, at the 12 service center facilities within the unit's geographic area, the number of unit employees has increased from 122 to about 266 over that time period. It is difficult, however, to evaluate the significance of these figures. We do not know how many unit jobs were lost at the time the hub was relocated. According to the Employer, ABX Air currently employs 300

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inaction following employer's unilateral change does not waive its right to bargain over such changes for all time; clear and unmistakable waiver required).

[39] Teamsters Local 814 (Santini Bros.), 208 NLRB at 199 (fact that unit jobs increased since employer began contracting out long distance hauling work to owner-operators was one of several factors underlying Board's finding that work was not fairly claimable); Air Line Pilots Association, 345 NLRB No. 51, slip op. at 4 (in addition to fact that union had no historical claim to the work at issue, the Board found that unit employees faced no risk of job loss if the union was not permitted to enforce the disputed contract provision). See also National Woodwork Mfrs. Assn. v. NLRB, 386 U.S. at 644 & n.38 (suggesting that the "remoteness of the threat of displacement by the banned product or services" was a factor which might be considered in determining whether union had primary objective). Compare Meat & Highway Drivers v. NLRB, 335 F.2d at 709 (primary work recapture object found where unit employees had lost 250 jobs).

employees who perform dock work at the Riverside hub. Thus, even if the 96th Street Facility was smaller than the Riverside hub, it is likely that a large number of unit employees performed dock work there and lost their jobs. Also, we do not know how many years passed before the unit began gaining jobs, but the evidence indicates that the bulk of the new positions were created in recent years, long after the relocation.[40]

The Board also has found work not fairly claimable based, in part, on a determination that the bargaining unit could not realistically handle a large influx of "recaptured" work.[41] Here, about 300 ABX Air employees perform dock work at the Riverside hub compared to only 266 employees – both dock workers and shuttle drivers – in the bargaining unit. Further, a Union official admitted that, as of November 2006, the Union had no employees on layoff who could be recalled into those positions. However, this is only one factor the Board considers and may not be significant enough, by itself, to outweigh the other indications that the Riverside work is fairly claimable.

Since the Union has a colorable argument that the Riverside hub dock work is fairly claimable, its grievance is reasonably based and does not have an unlawful object.

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[40] Thus, the Employer admits that 75 of the 144 new unit jobs were added from 2003 to 2006.

[41] Air Line Pilots Association, 345 NLRB No. 51, slip op. at 4 (in addition to fact that union had no historical claim to the work at issue, bargaining unit pilots would have difficulty "fulfilling [employer's] needs because acquisition of the...contract would represent an overwhelming influx of work"); Teamsters Local 814 (Santini Bros.), 208 NLRB at 199 (in addition to several other factors underlying Board's finding that long distance hauling work was not fairly claimable, the evidence indicated union had a "problem providing any additional men for any kind of moving").

Nor has the Union struck or picketed or threatened to do so.[42] Accordingly, the Region should dismiss the charge, absent withdrawal.

B.J.K.

[42] In those circumstances it would be necessary to decide whether the work is fairly claimable.